

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PENNSYLVANIA STATE CONFERENCE OF
THE NAACP, *et al.*,

Plaintiffs,

v.

AL SCHMIDT, in his official capacity as Acting
Secretary of the Commonwealth, *et al.*,

Defendants.

Case No. 1:22-cv-00339-SPB

MOTION FOR RECONSIDERATION

Plaintiffs seek reconsideration of the Court's Order, issued a few hours ago, dismissing the motion to intervene and the motion for a stay pending appeal filed by Proposed Intervenor local candidate Richard Marino and the GOP Intervenors. *See* Order, ECF No. 366. Reconsideration is proper to correct an error of law. *Castile v. PrimeCare Med. Inc.*, No. 18-CV-319, 2020 WL 1666640, at *1 (W.D. Pa. Apr. 3, 2020) (citing *N. River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995)).

The Court's dismissal order indicated that the filing of the notice of appeal in this case divested it of jurisdiction to consider Marino's motion to intervene, as well as the motion for a stay pending appeal. Order, ECF No. 366, at 1–2. However, the filing of the notice of appeal does not divest this Court of jurisdiction to “consider the merits” of Marino's motion to intervene. *See Halderman v. Pennhurst State Sch. & Hosp.*, 612 F.2d 131, 134 (3d Cir. 1979); *see also, e.g., Trenton Metro. Area Loc. of Am. Postal Workers Union, AFL-CIO v. United States Postal Serv.*, No. CV 06-2319 (JAP), 2008 WL 11510621, at *1 (D.N.J. Dec. 30, 2008). A motion for a stay pending appeal

may also be considered by the district court even after the notice of appeal is filed. *E.g., Hilburn v. Bayonne Parking Auth.*, No. 07-CV-5211, 2013 WL 1721648, at *1 (D.N.J. Apr. 19, 2013) (citing *In re Advanced Electronics, Inc.*, 283 Fed. Appx. 959, 963 (3d Cir. 2008); *e.g., First Amend. Coal. v. Jud. Inquiry & Rev. Bd.*, 584 F. Supp. 635, 636 (E.D. Pa. 1984).

Here, the Court has jurisdiction to consider Marino's belated intervention motion and the motion for a stay. The Court should grant reconsideration and deny the motions on the merits. The decision to grant or deny intervention in particular is a highly discretionary one. *E.g., Mountain Top Condo. Ass'n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 369 (3d Cir. 1995). This Court is especially well positioned to decide the intervention issue in light of its familiarity with the procedural history of the case, especially with respect to the dispositive question of whether Mr. Marino's motion to intervene, which was filed after this Court's entry of judgment and after the final certification of his electoral loss, is untimely in light of his own strategic delay in acting (or failing to act) to protect his rights.

Plaintiffs are prepared to file their opposition to the motions to intervene and for a stay forthwith if this motion is granted. Their opposition brief is attached to this motion as Exhibit A. Because Plaintiffs' opposition to the pending motions in the Third Circuit are not due until Tuesday, December 12, this Court can consider the merits of Marino's and GOP Intervenors' motions without any risk of simultaneity or inconsistent judgments.

CONCLUSION

This Court should reconsider its dismissal of Marino's motion to intervene and Marino's and the GOP Intervenors' motion for a stay and deny them both on the merits.

Dated: December 8, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on the date set forth below, I caused a true and correct copy of the foregoing Motion for Reconsideration to be served, together with all documents in support thereof, via electronic mail to all counsel of record.

Dated: December 8, 2023

/s/ Ari J. Savitzky
Ari J. Savitzky